OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

Sent Via E-mail

February 10, 2006

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Subject: Spill Prevention, Control, and Countermeasure Guidance for Regional Inspectors

The Oklahoma Independent Petroleum Association (OIPA) is providing this letter in response to the Environmental Protection Agency's (EPA) Spill Prevention, Control, and Countermeasure (SPCC) guidance document for regional inspectors. The OIPA represents approximately 1600 independent crude oil and natural gas producers that will be directly impacted by this document.

We appreciate EPA developing a guidance document that works toward the goal of consistent interpretation and application of the SPCC rules by EPA inspectors. However, we believe that such a guidance document should be preceded by a workable regulation that addresses environmental protection commensurate with the risk posed.

As you know, we have expressed concerns with the 2002 SPCC rule and the negative impacts that it has on the upstream crude oil and natural gas production sector of our industry. We believe that our issues need to be addressed in a new regulation as the guidance document is not legally binding on your regional offices and inspectors, and it does not substitute for the regulation. The following information summarizes our issues with the guidance document, and provides suggestions for future SPCC rulemakings.

Comments on the Guidance Document

- **Ref. Table 3-3, page 3-21, Section 112.7(g).** This table states that it applies to all facilities. Section 112.7(g) of the rule does not apply to oil production facilities. We request this be changed in the document.
- **Ref. Table 3-3, page 3-27, Section 112.9(c)(3).** Under "Verification During Site Visit", testing is not required and therefore testing records would not be available. The term "testing" should be deleted.
- **Ref. Table 3-3, page 3-27, Section 112.9(c)(4).** Under "Evaluation", it should be clarified that an operator is only required to select one of the four items provided.

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- **Ref. page 4-23, Section 4.2.9.** What is the justification for an inspector requesting calculations/engineering justifications in determining levels of imperviousness if this is not required by the rule? We are concerned this section will create problems between inspectors and operators during inspections in determining what is required by the rule. We request this section be clarified.
- **Ref. page 4-29, Section 4.4.1, Piping and Flowlines.** The document states that reports from ERNS indicates that discharges from valves, piping, flowlines, and appurtenances are more common than tank failure or discharge from tanks. We would like to see the discharge data for upstream crude oil and natural gas production facilities in Oklahoma that shows discharges for the different types of equipment.
- **Ref. page 6-2, Facility Diagram.** This section implies that scaled drawings are required. The rule does not state this, and we request this issue be clarified in the guidance document to prevent conflicts during inspections.
- **Ref. Table 7-1, page 7-3, Section 112.7(h)(3).** To prevent misinterpretation by an inspector, EPA should clarify that this is at "loading racks" and not at "loading areas".
- **Ref. Section 7.2.5, Flowline Maintenance Program.** This section appears to imply more requirements than what is stated in Section 112.9(d)(3) of the rule. We think this section will create problems between inspectors and operators during inspections in determining what is necessary for a flowline maintenance program. We request that EPA clarify this section.

Suggestions for Future Rulemakings

- **Data Supporting Additional 2002 Rule Requirements for Upstream Crude Oil and Natural Gas Production Facilities -** Industry has not seen the data that supports the need for additional requirements at upstream crude oil and natural gas production facilities, especially marginal well facilities. Crude oil production facilities are unlike mid-stream and downstream facilities, and should be addressed differently. The vast majority of upstream facilities do not use large volume storage equipment. Furthermore, many facilities are located in flat and arid areas where conditions are not conducive to impacts to navigable waters. EPA should first identify where the "real" environmental risks are located at crude oil and natural gas production facilities and then focus on those areas for future regulation.
- **Cost and Energy Impact Analysis -** The economic impact to upstream crude oil and natural gas production operators, especially those that operate marginal wells, has not been quantified by the EPA. The Interstate Oil and Gas Compact Commission

defines a marginal oil well as producing 10 barrels or less per day of crude oil and 60 million cubic feet or less of gas per day. Oklahoma ranks 2nd in the production of crude oil and natural gas from marginal wells. Over half of Oklahoma's oil production comes from marginal wells which accounts for approximately 41.4 million barrels of crude oil per year from approximately 48,000 marginal wells.

We are aware that the Department of Energy has initiated a cost impact study and believe that the results will be very beneficial. At a time when domestic oil and natural gas supply is being challenged to meet critical domestic demand, understanding these consequences will be essential to any reasonable future rulemaking decision.

- **Reasonable Definition of Navigable Waters -** The intent of the SPCC regulation is to prevent the release of oil into navigable waters. The EPA's broad interpretation of navigable waters that includes dry drainage ditches and road bar ditches is unreasonable. The uncertainty of what constitutes navigable waters has lead crude oil and natural gas production operators to develop costly plans and procedures when they are not necessary. The various court decisions have complicated this issue as well, and EPA's new guidance document does not provide any clarity on this issue.
- **Streamlined Process for Smaller Oil and Gas Production Facilities -** EPA's current "one size fits all" requirements, and its proposed smaller facility threshold does not address or take into consideration the risk at marginal crude oil and natural gas facilities as compared to larger bulk crude oil storage facilities and refineries that have high throughput and large single tank storage volumes. EPA should consider a streamlined approach for marginal well facilities which would include a streamlined SPCC plan, requirements that focus on the true risk and where historical data shows there is a true need for regulation, and a benefit/cost analysis of those requirements on small crude oil and natural gas operators.
- **Produced Water Tanks Should Not Be Considered Oil Storage Tanks -** The intent of the SPCC rule is to prevent and control oil discharges, not produced water discharges. Produced water tanks at crude oil and natural gas production facilities should be exempt from the SPCC regulations because there is a very low risk of a discharge of oil from them to navigable waters.
- **Secondary Containment for Equipment Other Than Bulk Storage Containers -** *Flow and Gathering Lines:* Fundamentally, flow lines are not and should not be considered oil storage containers. The SPCC statute and regulation is clearly aimed at oil storage. Requirements for containment around flow lines and gathering lines are excessive and impractical and will cause significant and unnecessary disturbance of the surrounding lands. Installing secondary containment (including double-walled piping) or retrofitting all existing flow lines and gathering lines is cost prohibitive and will cause the early abandonment of many existing, but economically very important, marginal wells. A more reasonable approach would be to allow operators to implement flexible and responsible, risk-based flow line inspection, maintenance, and

replacement programs to prevent spills, not prescriptive corrosion, integrity or pressure testing which can be extremely costly for small operators.

Loading Areas: One of the principal issues affecting costs at crude oil and natural gas production facilities, especially marginal wells, is the requirement in the new regulations for secondary containment at loading/unloading areas. While the API settlement agreement appears to address some of the issues at loading areas, alternative regulatory approaches are needed to reasonably and cost effectively manage the low risk during loading operations at crude oil and natural gas production facilities. Resolution of this issue should be clarified in a rulemaking only after EPA produces data which shows the need for such regulation.

Process Equipment: The containment of produced fluids around oil and gas fired process vessels, such as heater treaters, can present a serious safety hazard and it is impractical for pressurized vessels. In addition, the rule is inconsistent in regards to process/operating equipment among the different industrial sectors. At non-oil and gas facilities, it is excluded from the definition of bulk storage containers, whereas at these facilities, this type of equipment is considered bulk storage containers and subject to secondary containment requirements. The purpose of oil and gas process equipment such as heater treaters is to process oil/water mixtures. These vessels are flow-through process vessels and not storage vessels.

- **Other Issues -** In addition, there are a host of other fundamental issues regarding the 2002 SPCC rules that the EPA needs to address. These include but are not limited to:
  - the definition of a facility,
  - the requirement to have a SPCC plan prior to beginning any new or acquired operation at an upstream crude oil and natural gas production facility,
  - not allowing cost considerations in determining practicality or impracticability of a particular requirement during the planning process,
  - the lack of flexibility for the Professional Engineer in addressing site specific issues by EPA's change in terminology from "shoulds and shalls" to "musts or implied musts", and
  - the incorporation of the API settlement agreement issues into a rule.

We urge the EPA to develop a regulatory approach that is appropriate and reasonable for the upstream crude oil and natural gas production industry, especially for marginal wells, and the operators of those wells. This approach would include a practical definition of navigable waters and focus on those facilities that reasonably can be expected to impact those waters, include a benefit/cost analysis of the requirements being considered and implemented at upstream crude oil and natural gas production sites, address the "real" environmental risks at those sites and focus on those areas where there is a true need for regulation, and provide a practical and economic regulatory scheme that small operators can understand. Such an approach would encourage upstream crude oil and natural gas operators to comply, assure that industry's funds are spent where it can provide the most benefit, and maintain the viability of domestic production.

Again, we appreciate EPA developing a guidance document that works toward the goal of consistent interpretation and application of the rules by EPA inspectors. However, at this point the guidance document only serves to draw attention to the vast differences between what EPA believes is necessary versus what industry knows is prudent relative to the risk posed. We request that EPA clarify the issues identified above and begin the process to develop new regulations to address the fundamental problems of the 2002 SPCC rule. The issues raised in the 2002 rule are of such a magnitude that they simply cannot be corrected in a guidance document. We therefore implore EPA to gather the facts needed to objectively assess the risk posed by upstream crude oil and natural gas production facilities to navigable waters, to convene a working group to sketch out a prudent regulatory framework, and to then re-write the SPCC rule as it relates to the upstream crude oil and natural gas production sector. We believe that a rule which is based on facts and risk will meet both the letter and the intent of the statute, will be protective of navigable waters, and will foster economic viability for the U.S. upstream crude oil and natural gas production sector. In turn, this economic viability will result in a strong domestic supply. If you have any questions, please contact me at 405-942-2334, x 221. Thank you in advance for your consideration.

Sincerely,

Angie Burckhalter
V.P., Regulatory Affairs